



## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Centers for Medicare & Medicaid Services**

**42 CFR Parts 403, 405, 410, 411, 414, 415, 423, 424, and 425**

**[CMS-1751-F2]**

**RIN-0938-AU42**

### **Medicare Program; CY 2022 Payment Policies under the Physician Fee Schedule and Other Changes to Part B Payment Policies; Medicare Shared Savings Program Requirements; Provider Enrollment Regulation Updates; Provider and Supplier Prepayment and Post-payment Medical Review Requirements; Corrections**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

**ACTION:** Final rule; correction and correcting amendment.

**SUMMARY:** In the November 19, 2021 issue of the **Federal Register**, we published a final rule entitled “Medicare Program; CY 2022 Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment Policies; Medicare Shared Savings Program Requirements; Provider Enrollment Regulation Updates; and Provider and Supplier Prepayment and Post-Payment Medical Review Requirements” (referred to hereafter as the “CY 2022 PFS final rule”). The effective date was January 1, 2022. This document corrects a limited number of technical and typographical errors identified in the November 19, 2021 final rule.

**DATES:** This document is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], and is applicable beginning January 1, 2022.

**FOR FURTHER INFORMATION CONTACT:** Terri Plumb, (410) 786-4481, Gaysha Brooks, (410) 786-9649, or Annette Brewer (410) 786 6580.

**SUPPLEMENTARY INFORMATION:**

## **I. Background**

In FR Doc. 2021-23972 of November 19, 2021, the CY 2022 PFS final rule (86 FR 64996), there were technical errors that are identified and corrected in this correcting document. These corrections are applicable as if they had been included in the CY 2022 PFS final rule, which was effective January 1, 2022.

## **II. Summary of Errors**

### **A. Summary of Errors in the Preamble**

On page 65059, in discussing the policy we finalized for certain mental health telehealth services, we made a typographical error in indicating the number of months within which the physician or practitioner must have furnished an item or service in person, without the use of telehealth.

On page 65132 in Table 20: CY 2022 Work RVUs for New, Revised and Potentially Misvalued Codes, due to a clerical error in which the incorrect version of the table was included, the listed CMS work RVUs for CPT codes 64633 and 66989 are incorrect.

On page 65133, in Table 20: CY 2022 Work RVUs for New, Revised and Potentially Misvalued Codes, due to the same clerical error, the listed CMS work RVU for CPT code 66991 is incorrect.

On page 65274, in bulleted paragraph describing Chronic Care Management (CCM), due to a clerical error, the description of CPT code 99X21 is inaccurate.

On page 65501, we made typographical errors in the year designations of the performance period and MIPS payment year.

### **B. Summary of Errors in the Regulations Text**

On page 65674, we made typographical errors in the year designations of the performance period and MIPS payment year.

## **III. Waiver of Proposed Rulemaking**

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (the APA), the agency is required to publish a notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Social Security Act (the Act) requires the Secretary to provide for notice of the proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA and section 1871(e)(1)(B)(i) of the Act mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the APA notice and comment, and delay in effective date requirements; in cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal notice and comment rulemaking procedures for good cause if the agency makes a finding that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and includes a statement of the finding and the reasons for it in the rule. In addition, section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and the agency includes in the rule a statement of the finding and the reasons for it.

In our view, this correcting document does not constitute a rulemaking that would be subject to these requirements. This document merely corrects technical errors in the CY 2022 PFS final rule. The corrections contained in this document are consistent with, and do not make substantive changes to, the policies and payment methodologies that were proposed, subject to notice and comment procedures, and adopted in the CY 2022 PFS final rule. As a result, the corrections made through this correcting document are intended to resolve inadvertent errors so that the rule accurately reflects the policies

adopted in the final rule. Even if this were a rulemaking to which the notice and comment and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the CY 2022 PFS final rule or delaying the effective date of the corrections would be contrary to the public interest because it is in the public interest to ensure that the rule accurately reflects our policies as of the date they take effect. Further, such procedures would be unnecessary because we are not making any substantive revisions to the final rule, but rather, we are simply correcting the **Federal Register** document to reflect the policies that we previously proposed, received public comment on, and subsequently finalized in the final rule. For these reasons, we believe there is good cause to waive the requirements for notice and comment and delay in effective date.

#### **IV. Correction of Errors in Preamble**

In FR Doc. 2021-23972 of November 19, 2021 (86 FR 64996) make the following corrections:

1. On page 65059, the sentence that continues at the top of the second column, line 2, the phrase “6 months” is corrected to read “12 months”.
2. On page 65132, in Table 20: CY 2022 Work RVUs for New, Revised and Potentially Misvalued Codes, for CPT code 64633, fifth column, the second full row, the CMS work RVU that reads “3.31” is corrected to read “3.32” and for CPT code 66989, fifth column, the last row, the CMS work RVU that reads “10.31” is corrected to read “12.13”.
3. On page 65133, in Table 20: CY 2022 Work RVUs for New, Revised and Potentially Misvalued Codes, for CPT code 66991, fifth column, the second full row, the CMS work RVU that reads “7.41” is corrected to read “9.23”.
4. On page 65274, second column, first full bulleted paragraph, lines 5 through 8,

the phrase “CCM services furnished by clinical staff under the supervision of a physician or NPP who can bill E/M services, and” is removed.

5. On page 65501:

a. The second column, first full paragraph, lines 4 through 6 that read “beginning with the CY 2023 performance period/ 2025 MIPS payment year” are corrected to read “beginning with the CY 2022 performance period/2024 MIPS payment year.”

b. The third column, first full paragraph, lines 3 through 5 that read “beginning with the CY 2023 performance period/2025 MIPS payment year” are corrected to read “beginning with the CY 2022 performance period/2024 MIPS payment year.”

#### **List of Subjects in 42 CFR Part 414**

Administrative practice and procedure, Biologics, Diseases, Drugs, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, CMS corrects 42 CFR part 414 by making the following correcting amendments:

#### **PART 414--PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES**

1. The authority citation for part 414 continues to read as follows:

Authority: [42 U.S.C. 1302](#), 1395hh, and 1395rr(b)(1).

#### **§414.1380 [Amended]**

2. Amend § 414.1380 by:

a. In paragraph (b)(1)(i)(A)(3), removing the text “Beginning with the CY 2023 performance period/2025 MIPS payment year” and adding in its place the text “Beginning with the CY 2022 performance period/2024 MIPS payment year”.

b. In paragraph (b)(1)(i)(C), removing the text “Beginning with the CY 2023 performance period/2025 MIPS payment year” and adding in its place the text “Beginning with the CY 2022 performance period/2024 MIPS payment year”.

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**Karuna Seshasai,**

Executive Secretary to the Department,

Department of Health and Human Services.

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